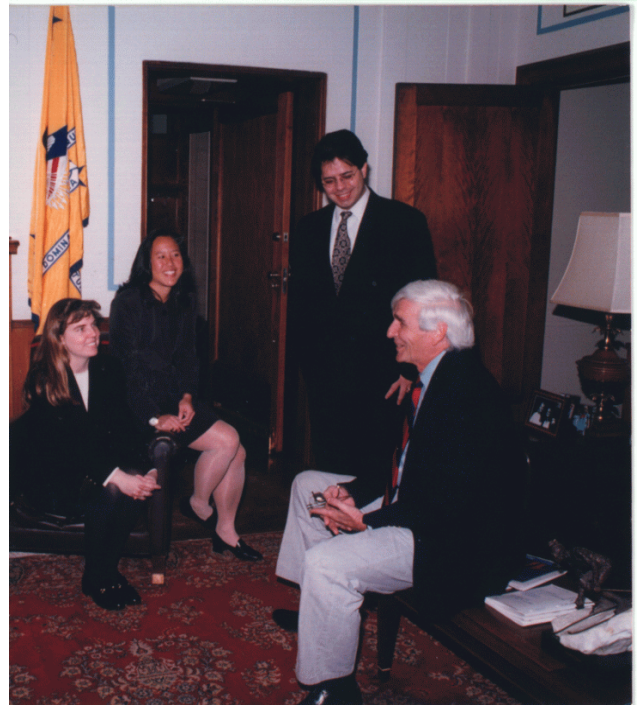

The Role of the Civil Division

In 1868, when Congress gave the Attorney General responsibility for all Government litigation before the Court of Claims, few anticipated the development of this function into the present-day Civil Division, or the significance and enormity of the Division's work. Today, the Civil Division is the largest litigating division within the Department of Justice, employing approximately 660 attorneys.

The Civil Division represents the United States, its agencies, and its employees in general civil litigation before both trial and appellate courts. The subject matter of the Division's litigation is as broad and diverse as the activities of the Government itself. Many of its cases have significant domestic and foreign policy implications. The Division handles litigation worth billions of dollars in areas such as fraud, international trade, patents, bankruptcies, claims against the Government, and foreign litigation. It defends the United States in suits challenging the constitutionality, lawfulness or propriety of Presidential initiatives, Federal statutes, and Government programs and actions. It initiates litigation to enforce various Federal statutes, including the nation's consumer protection and immigration laws, and defends against challenges to those statutes and associated enforcement activities. The Division also litigates general tort claims, including those that involve toxic substances, aviation, admiralty, and the defense of Federal officials sued personally for official actions.

The Civil Division has the capacity to bring a wide range of experience and talent to bear on virtually any legal issue. Civil Division lawyers have established a record of professional excellence of the highest order in representing the United States of America.



Frank W. Hunger, Assistant Attorney General for the Civil Division, speaks with Honor attorneys Elisabeth Sperow, Deborah Ho, and Andrés Colón, who are just beginning their careers at the Department of Justice.

The Structure of the Civil Division

The Division is headed by an Assistant Attorney General, appointed by the President and confirmed by the Senate, and five Deputy Assistant Attorneys General. The organizational chart on the previous page illustrates this structure and the division of responsibilities.

The Division has six major components: the Commercial Litigation Branch, the Federal Programs Branch, the Torts Branch, the Office of Immigration Litigation, the Office of Consumer Litigation, and the Appellate Staff. The increasing scope of civil litigation has multiplied the Division's caseload and

responsibilities. This has proven to be particularly true in the areas of debt recoveries, fraud and abuse in Federal programs, savings and loan litigation, vaccine injury, aviation, alien detention and removal, and regulatory initiatives. Caseload growth has also increased the work of the Appellate Staff, which handles appeals for the entire Division. Due to the increasing appellate caseload and the expanding expertise in the branches and offices, many opportunities exist for attorneys within the components to handle cases in the appellate courts.

As a result of the demanding caseload, a new attorney is immediately involved in handling significant litigation for the Division. Unlike his or her counterpart in the private sector, the Civil Division attorney receives substantial responsibility for cases from the start. Attorneys determine strategy and tactics, prepare pleadings and briefs, and manage discovery and general trial proceedings. In some instances attorneys handle cases alone and, in others, they share the casework responsibility with another attorney or a team of attorneys.

Commercial Litigation Branch

The largest branch in the Division, the Commercial Litigation Branch handles cases that involve billions of dollars in claims both by and against the Government. This Branch prosecutes claims for the recovery of monies fraudulently secured or improperly diverted from the United States Treasury. It defends the country's international trade policy, and defends and asserts the Government's contract and patent rights. In addition, the Branch protects the Government's financial and commercial interests under foreign treaties.

The Branch's workload, handled by more than 200 attorneys, falls into six major areas: general corporate/financial litigation, civil fraud, patent and copyright matters, litigation in the Court of Federal Claims/Federal Circuit, customs and international trade, and foreign litigation.

General Corporate/Financial Litigation

Branch attorneys pursue affirmative and defensive litigation to protect the interests of the United States in commercial matters involving large sums of money. These matters include corporate bankruptcy and reorganization proceedings; Federal subsidy, loan, and insurance programs; and veterans' reemployment rights in private industry, including seniority rights.

The Branch handles commercial cases involving billions of dollars in Federal district courts, courts of appeals and bankruptcy courts. Examples include large bankruptcies filed by Orange County, Pan Am, Continental Airlines, and TWA. District court actions often result in complex litigation which affects numerous states, banks, and corporations. Efforts to recover hundreds of millions of dollars from insurance companies in connection with the administration of the Medicare program; actions involving billions of dollars in defaulted loans made by the Rural Utilities Service (formerly the Rural Electrification Administration) to financially troubled utilities; and suits concerning failed thrifts and banks are the responsibility of Branch attorneys.

Civil Fraud

The Civil Fraud section litigates many of the Division's biggest money-making cases. Working with the U.S. Attorneys' Offices, Branch attorneys have recovered over \$3.6 billion in the past decade. This litigation recovers losses from those who defraud the Government through contracts, Federal programs, and the bribery and corruption of Federal officials; cases are filed in United States district courts. Attorneys work closely with criminal prosecutors, the Federal Bureau of Investigation, and various Inspectors General. The cases handled by Branch attorneys involve health care providers and others who defraud Medicare, Medicaid, and other federally administered health care programs, as well as contractors who mischarge non-allocable costs to Government contracts, the substitution of

substandard goods furnished under Defense and other contracts, multi-million dollar loan fraud, conflict of interest cases, and abuses involving Federal grant monies.

For example, Branch attorneys, working jointly with various U.S. Attorneys' Offices and state Medicaid programs, recently recovered \$325 million from SmithKline Beecham Clinical Laboratories for fraud in blood testing services billed to the Government. The settlement resolved allegations that automated series of tests were billed and marketed in such a way that Federal payors paid for tests that were not medically necessary, and in some instances not performed. This is the latest of a series of settlements arising from Operation Labscam; total civil recoveries and criminal fines are more than \$800 million from independent laboratories since late 1992.

Other Branch cases in the health care fraud area also have focused on nationwide schemes. For instance, working with U.S. Attorneys Offices, the Branch secured a \$324 million dollar settlement from National Medical Enterprises, which owned a nationwide chain of psychiatric hospitals, to resolve claims that it systematically overbilled various Federal health care programs. Similarly, as part of a \$161 million global settlement, Caremark, Inc. paid the Government \$81 million to resolve civil claims based on allegations of kickbacks and fraud in Caremark's home infusion, oncology, hemophilia, and human growth hormone businesses.

The Branch also has skillfully litigated and settled many defense procurement fraud cases. Settlements include a \$150 million agreement with United Technologies Corporation to settle allegations that the company had overstated progress payments and had misrepresented the facts in reporting the fraud to the Government through the Department of Defense's Voluntary Disclosure Program. Other recoveries include: \$85 million paid by Teledyne to settle a *qui tam* suit involving fraud in testing military components; \$82 million paid by Litton Systems, Inc. in a *qui tam* settlement involving

claims that Litton overcharged the Government for computer services; \$75 million paid by Boeing to resolve allegations that the company mischarged independent research and development costs and that it charged the Government for foreign direct selling and hazardous waste disposal costs that should have been borne by Boeing; and \$79 million in cash and \$8.8 million in parts paid by Lucas Western, Inc., in settlement of allegations that the company had knowingly shipped non-conforming and defective parts on Defense Department contracts and had engaged in false and fraudulent testing practices.

In addition to health care and defense procurement, fraud cases arising from other Federal programs are handled by Branch attorneys. For example, USA Training Academy and its majority owner paid \$14 million to settle allegations that they defrauded the Department of Education by falsely representing the Academy as eligible to participate in grant programs, failing to pay and delaying student refunds, and falsifying records.

Patent and Copyright Matters

The Commercial Litigation Branch defends the United States against allegations of patent and copyright infringement in the United States Court of Federal Claims and the United States Court of Appeals for the Federal Circuit. One example of a significant case in this area is *Hughes Aircraft v. United States*, alleging infringement of a patent pertaining to space satellites. In affirmative litigation in the Federal district courts, the Branch enforces Government-owned patents and seeks the assignment of patents to the Government for inventions arising from Government-sponsored research. The Branch occasionally represents Government employees and agencies in a variety of proceedings before the Patent and Trademark Office, the district courts, and the courts of appeals.

Contract Disputes and other Claims Court Matters

The Commercial Litigation Branch serves as the "U.S. Attorney" for the United States Court of Federal Claims (formerly the Claims Court) and the United States Court of Appeals for the Federal Circuit. Lawyers in the Branch perform the full range of litigation functions, from responding to the complaint through the presentation of appellate argument, for a broad spectrum of commercial topics. Litigation in the Court of Federal Claims includes contract cases arising under the *Contract Disputes Act of 1978* and bid protest actions seeking declaratory and injunctive relief. One contract dispute case currently in litigation is *McDonnell Douglas and General Dynamics v. United States*. In this case, the plaintiff is challenging the termination of a contract for the A-12 "stealth" aircraft. The complaint seeks equitable adjustment of \$1.3 billion and reimbursement of all costs incurred by the contractor (approximately \$2 billion). A number of additional multi-million dollar contract disputes are currently being defended by Branch attorneys including claims following the construction of a new Veterans Administration hospital, the procurement of submarine chasers for the Navy, a group of cases brought by timber companies logging on Federal lands, and a series of cases by stockholders and banks following the enactment of the *Financial Institutions Reform, Recovery and Enforcement Act of 1989*.

Other commercial topics under the jurisdiction of this court are: claims for pay by Federal civilian employees; claims by military personnel for pay, reinstatement and retirement benefits; claims pursuant to a statutory loan guarantee or benefit program; claims for just compensation under the Takings Clause of the Fifth Amendment; and cases assigned by congressional reference and special legislation. Branch attorneys are further responsible for litigation arising from appeals of Court of Federal Claims' decisions, petitions for review of Merit Systems Protection Board decisions under the *Civil Service Reform Act of 1978*, appeals from agency contract appeals boards' decisions, appeals

from the Court of Veterans Appeals, and a limited number of appeals from Federal district courts.



Commercial Litigation Branch attorneys (back row, from left) Carol Wallack, Lt. Col. Debra Baker, Armando Bonilla, Harold Lester (front row, from left) Elizabeth Newsom, and Deputy Director Sharon Eubanks gather in the Chief Judge's courtroom at the Court of Federal Claims.

Customs and International Trade

The United States is represented by the Commercial Litigation Branch in all international trade and customs matters before the Court of International Trade and the Court of Appeals for the Federal Circuit. Branch attorneys in Washington defend the imposition of special duties upon dumped or subsidized imports, prosecute civil customs fraud violations, and counter attacks against our international trade agreements. A field office in New York is responsible for cases involving tariff classification and valuation of imported merchandise; the collection of import duties; and a variety of other actions regarding the administration of the customs laws of the United States. During recent years, for example, Branch attorneys have defended the exclusion of merchandise allegedly made in China by "slave" labor; obtained a record \$34 million settlement from

Daewoo, a Korean conglomerate charged with massive customs fraud; and defeated a constitutional challenge to the binational panel dispute resolution system created by the U.S.-Canada Free Trade Agreement for the review of antidumping and countervailing duty determinations. At present, Branch attorneys are countering a significant number of actions challenging the imposition of antidumping and countervailing duties upon steel imports from numerous countries.

Foreign Litigation

The Commercial Litigation Branch is responsible for the representation of the United States in foreign proceedings and represents the Government in some domestic cases involving questions of international and foreign law through its Office of Foreign Litigation. There are over 1,300 cases pending in approximately 80 countries. For example, the United States recently recovered \$3 million from bank accounts in Antigua for use by the Federal Trade Commission for restitution to victims of fraud traceable to an illegal pyramid scheme operated over the Internet. In a case of first impression, a Canadian appellate court affirmed a lower court ruling recognizing and enforcing a \$4.6 million judgement of a U.S. district court based on the *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*.

Federal Programs Branch

The Federal Programs Branch litigates on behalf of approximately 100 Federal agencies, the President and Cabinet officers, and other Government officials. The activities of this Branch include defending against constitutional challenges to Federal statutes, suits to overturn Government policies and programs, and attacks on the legality of Government decisions. These cases typically seek injunctive and declaratory relief and vary from allegations that the *Line Item Veto Act* and the *Brady Act* are unconstitutional to suits attacking the way the Gov-

ernment deals with its employees. The Branch also initiates litigation to enforce regulatory statutes and to remedy statutory and regulatory violations.

The Federal Programs Branch has over 100 attorneys. New attorneys are not assigned to any particular subject matter, but handle a variety of cases from several of the Branch's many areas of responsibility.

National Security, Foreign Relations, and Law Enforcement

The Federal Programs Branch is involved in critical and highly visible national security, foreign relations, and law enforcement litigation. In this capacity, our clients include the President, the Department of Defense, the Department of State, the Central Intelligence Agency, and the Attorney General. For example, the Branch successfully defended against a challenge to the implementation of the *Ballistic Missile Defense Act of 1995* brought by Members of Congress. The Branch is also defending against lawsuits challenging the Department of Defense's policy regarding homosexual military personnel. In addition, the Branch is defending constitutional challenges to the *Prison Litigation Reform Act of 1995* as well as to child pornography legislation.

Interstate and Foreign Commerce

Among matters involving interstate and foreign commerce are defenses to challenges to significant actions taken by the Treasury, Commerce, Transportation, and Labor Departments. The Branch represents the Treasury Department in litigation challenging economic sanctions (such as the Cuban and Iraqi sanctions instituted by the President pursuant to the *Trading with the Enemy Act* and the *International Emergency Economic Powers Act*). The Branch has also successfully defended against constitutional challenges to the semiautomatic assault weapons ban and cases involving the *Davis-Bacon*

Act, which requires the payment of prevailing wages to employees working on Federal construction projects.

Government Agencies and Corporations

This area includes the defense of various independent regulatory agencies, the Postal Service, the Department of Veterans Affairs, and miscellaneous other agencies. The White House and legislative and judicial components are also the subjects of litigation in this area. The Branch is currently defending against First Amendment challenges to the authority of Congress to regulate the cable and Internet media and the constitutionality of the *Religious Freedom Restoration Act*. The Branch is also defending against several actions alleging the Department of Education's administration of education programs for both public and private school children (including children who attend religiously-affiliated schools) violates the Establishment Clause.

Nondiscrimination Personnel Litigation

Nondiscrimination personnel litigation includes suits involving constitutional, statutory, and other issues of appointment and removal of officers and employees of the United States, including Presidential appointees. This area also includes First Amendment, Fourth Amendment, and other constitutional challenges to Government-wide statutes, regulations, or programs such as Government employee ethical rules, drug testing for employees in sensitive positions, and security or other personnel forms. Challenges to reductions-in-force, agency reorganizations, and personnel procedures during lapses of appropriation are part of this area. The Branch also handles actions brought by employees pursuant to the Civil Service Reform Act, including before the Merit Systems Protection Board.

Discrimination in Employment Litigation

This area includes defense against suits alleging discrimination in Federal employment under the U.S. Constitution and a number of Federal statutes and Executive Orders, including Title VII of the *Civil Rights Act*, the *Equal Pay Act*, and the *Age Discrimination in Employment Act*. The Branch defends a number of complex Title VII class actions, as well as high-profile or novel individual cases. Since the authorization of the compensatory damages and jury trials in 1991, this field of litigation has seen explosive growth in both the number and complexity of cases. Cases include statutory and constitutional affirmative action challenges, class-wide claims of hostile work environment, and issues involving the statutory interpretation of various provisions of the 1991 revisions.

Human Resources

This area focuses on challenges to the wide variety of programs administered by the Department of Health and Human Services (HHS) and the Department of Education. Current cases include challenges to the constitutionality of various provisions of the *Welfare Reform Act* regarding benefits for non-citizens. The Branch is also defending constitutional challenges to provisions of the Medicare and Medicaid statutes, as well as challenges to HHS regulations concerning Medicare and Medicaid reimbursement of hospitals, physicians, and other suppliers of health care services in those programs. In addition, the Branch has handled a series of cases seeking to invalidate Department of Education regulations involving the administration of Federal student loan and grant programs, particularly those that apply to proprietary schools, as well as suits involving program decisions involving allocations of Federal monies and resources by the Public Health Service and Indian Health Service and challenges to NIH investigations concerning allegations of scientific misconduct in federally funded research programs.

Interior, Agriculture, and Energy Concerns

The Federal Programs Branch handles a variety of cases involving the programs of the Departments of Agriculture (USDA), Interior, and Energy. USDA's commodity marketing and promotion order programs, the Food Stamp program, and meat safety and inspection services have been among those involved in recent cases. The Branch has also recently handled First Amendment cases concerning access to national forests by demonstrators and the news media. Energy Department policies regarding the administration of trust funds for the storage of nuclear waste and challenges to the policies of Federal power marketing agencies are among those handled by Branch attorneys. Recent cases have also involved the relationship between the United States and the former Trust Territories of the Pacific.



Federal Programs Branch Director David Anderson discusses a brief with Assistant Director Susan Rudy.

Housing and Community Development

This area encompasses housing and housing-related cases involving the Department of Housing and Urban Development (HUD), the Farm Service Agency (FSA), and the military departments. The litigation arises primarily under Title VIII of the *Civil Rights Act of 1968*, the *United States Housing Act*, the *National Housing Act*, and the *McKinney Act*. The suits in this area concern the rights of tenants in federally subsidized housing, the Government's obligations to public housing authorities (PHAs), the disposition of HUD-owned mortgages, rural housing programs, and housing for the homeless. Much of the ongoing litigation involves allegations that HUD has acquiesced in discrimination in the selection by PHAs of the sites for, or tenants in, federally subsidized or assisted housing. The Branch also has defended a number of suits brought by homeless persons seeking to utilize military property for temporary housing, as well as suits alleging FSA and its predecessor agencies discriminated in the provision of rural housing assistance.

Freedom of Information and Privacy

The Federal Programs Branch is directly involved in ever-increasing litigation under the *Freedom of Information and Privacy Acts*. The Branch defends against many lawsuits seeking documents used or created by Government agencies, including the litigation over materials related to the Waco incident and the documents related to investigations of the FBI's crime lab and its handling of evidence. Privacy Act suits include litigation over the acquisition by the White House of FBI background file summaries. The Branch also litigates issues arising under open Government statutes such as the *Federal Advisory Committee Act* and the *Government in the Sunshine Act*, that can involve constitutional separation of power issues. Branch attorneys represented the White House in a major challenge to the record keeping practices of the National Security Council and other White House offices with respect to the preservation of electronic mail. In addition, the Branch defends Government agencies against third party subpoenas, such as a request that the National

Transportation Safety Board turn over custody to private litigants the wreckage of the ValuJet aircraft that crashed in Florida.

Regulatory Enforcement and Defensive Banking Litigation

The Federal Programs Branch ensures compliance with Federal statutes and regulations by initiating enforcement actions on behalf of Federal agencies. For example, the Branch recently brought an action on behalf of the National Highway Traffic Safety Administration against an automobile manufacturer that refused to conduct a recall campaign after a Government test revealed that the seatbelt anchorages on one of the manufacturer's vehicles failed the applicable safety standard. The Branch has also sued a bovine vaccine manufacturer for violations of USDA statutes and regulations concerning the shipment of contaminated products. Another of the Branch's responsibilities includes litigating issues arising under the supremacy clause where state and local governments interfere with Federal functions. In one such case, the Branch initiated a suit against a state supreme court and bar association to enjoin an rule which restricts the ability of Federal prosecutors to present evidence to a Federal grand jury. The Branch also represents the United States in actions to collect civil penalties under various statutes, in actions, to enforce the *Ethics in Government Act* against present and former Federal officials, and seeks judicial enforcement of Inspector General and other administrative subpoenas.

The Branch also defends banking agencies whose authority comes under attack. The Branch principally defends the National Credit Union Administration (NCUA) and the Farm Credit Administration. Recently, Branch attorneys defended the NCUA against challenges to its interpretation of the statutory requirement under which credit union members must belong to groups having a common bond. The Branch also defends actions for damages brought against various Federal

agencies for violations of the *Right to Financial Privacy Act*, a statute which prescribes specific procedures to be followed when a Government agency seeks a customer's records from a financial institution.

Disability Litigation

One of the largest areas of litigation in Federal courts today involves various aspects of the Social Security system. These cases range from garden variety disputes involving individuals' Social Security disability claims, which are generally handled by the U.S. Attorneys' offices, to nationwide, class-action lawsuits intended to effect substantive changes in the Social Security Administration's (SSA) regulations and procedures. Recent class actions handled by the Branch include challenges to SSA's supervision of state disability determination procedures and the implementation of benefit reductions for children and drug and alcohol-dependent disabled persons. The Branch also defends novel cases under the *Rehabilitation Act*, which precludes discrimination on the basis of a handicap. This fast-growing field of litigation involves challenges to employment decisions based upon claims that an adverse decision was due, for example, to infection by the AIDS virus, drug and alcohol dependency, and other conditions that could be perceived as handicaps.

Torts Branch

The Torts Branch represents the interests of the United States, including its officers and agents, in suits where monetary judgments are sought for damages resulting from negligent or wrongful acts. The Branch also handles actions involving injury or damage to Government property.

The work of the approximately 140 Torts Branch attorneys falls into four categories: aviation and admiralty litigation; general tort claims; environmental and occupational disease litigation; and constitutional and specialized tort litigation.

Aviation and Admiralty

Aviation tort litigation arises from the Government's varied activities in the operation of the air traffic control system, the regulation of air commerce, weather services, aeronautical charting, and the Government's operation of its own civil and military aircraft. Chief clients include the Department of Transportation/Federal Aviation Administration, the Department of Defense, the Department of Commerce, and numerous agencies which operate their own aircraft. Cases have ranged from the "friendly fire" Desert Storm missile deaths to the crash of USAIR1016/Charlotte, the Air Force T-43/Ron Brown crash, the ValuJet/Everglades crash, and numerous cases arising from the extensive flight activities of private, business, and military aircraft.

The Torts Branch represents the Government in its role as a shipowner and regulator of the nation's coastal and inland waterways, as well as its growing activities in the area of waterborne pollution cleanups. The Admiralty staff base is located in Washington, D.C. with field offices in New York City and San Francisco. In addition to defending agencies such as the Army Corps of Engineers, the Coast Guard, and the Commerce Department in navigation aid, obstruction, and charting cases, the Torts Branch also represents the Maritime Administration in preferred ship mortgage foreclosure proceedings. Additionally, the Admiralty staff brings affirmative claims on the Government's behalf for cargo and facilities damage and for pollution cleanup expenses, and a number of these cases each year exceed \$1 million. Cases have included the EXXON VALDEZ oil spill, the \$100 million maritime contract claims made by the International Maritime Corporation, the grounding of the QE2 off Cape Cod, and the TENYO MARU collision and oil spill off the Northwest U.S. coast.



Major General Michael J. Nardotti, Jr., Judge Advocate General, U.S. Army, presents Torts Branch Director Jeffrey Axelrad with the Commander's Award for Public Service, the highest award the Army bestows upon an individual not employed by the Department of Defense.

General Tort Claims

Cases handled by the general tort litigators include traditional problems in tort law, such as medical malpractice and other personal injury litigation, as well as seminal issues arising in areas as diverse as radiation cases and suits filed in the aftermath of major bank failures.

General tort claims cases arise under the Federal Tort Claims Act (FTCA) and are immensely varied. For instance, Branch attorneys are currently defending litigation arising from law enforcement operations at Ruby Ridge, Idaho, and the Branch Davidian compound outside Waco, Texas.

Branch attorneys also handle litigation arising from military operations. In *Clark v. United States*, for example, they successfully defended claims of genetic injury during the Gulf War. In *O'Neill v.*

United States they obtained dismissal of a suit brought by the estate of a Naval Academy graduate who was murdered by her ex-fiancé who had also graduated from the Academy.

The Torts Branch FTCA litigators have also prevailed in numerous other cases raising a broad variety of legal and financial issues. In *Joseph v. United States*, mine inspectors were accused of negligence in failing to correct unsafe practices which caused a mine collapse. In *Ward v. United States*, an adult camper fell into a campfire which she said should have been designed more safely. In another category of litigation, Branch attorneys spared the United States the expense of a wrongful death suit brought by families of skiers killed in an avalanche. That suit, *Marquez v. United States*, alleged that a back country area should have been closed for skiing.

The Torts Branch also handles FTCA litigation of persons who allegedly contracted AIDS due to Government negligence in the course of blood transfusions or other medical procedures. In addition, the Branch is involved in medical malpractice suits seeking high recoveries, and many suits founded upon allegations that Federal agencies have acted negligently. These examples reflect the wide range of circumstances in which FTCA cases arise. They also illustrate the many different types of suits in which these attorneys protect the United States from second-guessing, in the tort litigation context, of governmental policy decisions, and from exposure to excessive liability.

Environmental Torts

Litigation involving exposure to toxic substances has emerged as a new frontier in tort law. Increasing numbers of cases have emerged, premised upon exposure to a variety of chemicals and substances--many only recently discovered to be toxic--resulting in staggering monetary claims being sought by plaintiffs for alleged property damage and personal injuries. Toxic tort litigation commonly results from

contamination of the environment or exposure in the workplace. Frequently, disease or injury manifests itself only following cumulative or repeated exposure to toxic substances. Contamination may be transient and its source readily apparent, as in the case of a chemical spill or industrial accident. In other instances, the source of contamination may be chronic or latent, as in the case of progressive groundwater contamination or exposure to airborne contaminants.

The scope and breadth of governmental activities has led to an increase of lawsuits alleging governmental negligence in the toxic tort area, against which the Torts Branch must defend the United States. For example, plaintiffs have claimed Federal tort liability in circumstances of groundwater pollution and other forms of environmental contamination in connection with the use, processing, and disposal of a wide variety of toxic substances on and around military installations nationwide. Often these cases are based on activities that occurred, and were concluded, decades before the suits were brought, and involve an array of scientific disciplines, including groundwater hydrology, toxicology, immunology, neurology, and neuropsychology. In other instances, private parties involved in environmental regulatory litigation charge the Government with negligence as a "potentially responsible party", or in the Environmental Protection Agency's role in supervising clean-up activities.

The Torts Branch has also been called upon to defend the United States and its instrumentalities against claims for indemnification and contribution brought by members of industries whose products were used by the Government, but contained toxic substances. Asbestos and Agent Orange have frequently been the focus of these suits, where private manufacturers have sought to shift their tort liability (mostly from injuries to persons working on Government projects) onto Federal taxpayers. In the past decade, Branch attorneys have defeated such suits, avoiding tens of billions of dollars of potential liability through aggressive motions, appellate practice, and, in the case of asbestos litigation, the effective use of

an automated litigation support network of unprecedented magnitude.

The Torts Branch handles other high-visibility litigation such as the cases arising out of human radiation experiments, conducted decades ago by various Government agencies and contractors. In representing the interests of the United States in asbestos and other toxic tort litigation, Torts Branch attorneys are called upon to conduct analyses of convoluted fact situations, to familiarize themselves with and address complex scientific and medical issues, to develop solid evidentiary bases for litigation, and to prepare and present sound arguments to sustain the Government's position.

Constitutional and Specialized Torts

Since the 1971 Supreme Court decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, which authorized personal tort lawsuits against Federal officers, liability for official acts has been an area of significant concern and litigation for Federal employees. It is estimated that, at any given time, some 5,000 suits seeking individual damages from Federal employees for alleged constitutional, common law and statutory tort may be pending. The subject matter of the suits varies widely, from such issues as the Branch Davidian compound in Waco, Texas, to medical malpractice, and personnel confrontations, insolvent financial institutions, national security matters, and many other types of Federal activity. Defendants include all levels of Federal officials from Cabinet officers to employees with the most routine of tasks. The Constitutional and Specialized Torts staff (CSTL) represents these individual Federal employees both directly and by monitoring and guiding the work of U.S. Attorneys.

The "Specialized Torts" portion of the title for the office signifies another new and important mission within the Torts Branch. Additional areas of tort practice and novel procedures for dealing with them are beginning to appear within the overall fabric of Federal litigation. Among these is the Vaccine Injury Compensation Program. In 1986,

Congress enacted, and has since amended, a statutory program which establishes a compensation system to deal with injuries and deaths allegedly attributable to standard vaccines. Included in the program is a streamlined adjudication process similar to medical malpractice and products liability tort litigation. Vaccine litigation attorneys of the CSTL staff defend claims filed against the Secretary of Health and Human Services for damages authorized by the statute. The litigation is characterized by fast track, intensive medical/factual/legal adjudication in the Court of Federal Claims. With the total caseload exceeding 2,000 cases, Vaccine staff attorneys conducted over 400 trials in 1996 and delivered 14 oral arguments in the U.S. Court of Appeals for the Federal Circuit. Finally, the CSTL Branch also handles cases under the *Radiation Exposure Compensation Act of 1990*, which offers compensation to individuals exposed to radiation released during above ground nuclear weapons tests and uranium mining.

Office of Consumer Litigation

The Office of Consumer Litigation (OCL) is the unit within the Department that is chiefly responsible for enforcing the nation's consumer protection laws and defending the Federal agencies that administer those laws. Among the Office's client agencies are the Food and Drug Administration (FDA), the Federal Trade Commission (FTC), the Consumer Product Safety Commission, and the National Highway Traffic Safety Administration (NHTSA). Approximately 25 OCL attorneys handle civil and criminal cases at both the trial and the appellate levels. Following are some examples of the types of cases that OCL lawyers have litigated over the last few years.

From the late 1980's through the present, OCL has led the prosecution of generic drug manufacturing companies and their officers and employees who obtained FDA approval of various generic drugs through the submission of falsified test data. The prosecution of these cases has in large measure

restored public confidence in the safety and efficacy of generic drug products. Some 15 companies and 55 individuals have either plead guilty or been convicted at trial. Fines totaling more than \$50 million and jail sentences of up to five years have been imposed. Additionally, OCL has successfully defended against legal and constitutional challenges to FDA's debarment of convicted generic drug company executives from further participation in the generic drug industry.



OCL has worked to enforce the statutory ban against broadcasts of cigarette advertising, negotiating consent decrees that enjoin Philip Morris Co. and sports arenas from positioning cigarette advertising in locations where the advertising will appear in broadcasts of sporting events, as shown here.

On the flip side of the generic drug issue, OCL has successfully defended FDA approvals of generic versions of some of the most widely used name-brand drugs against attack by name-brand manufacturers. The courts have repeatedly adopted OCL's arguments and held for FDA, finding that deference is owed to the agency's view of the appropriate scientific tests to determine whether the generic drugs are equivalent to the name brands.

OCL has also prosecuted a number of name-brand drug manufacturers for violations of various requirements of the *Food, Drug, and Cosmetic Act*. Recently, Warner-Lambert Company plead guilty to a felony violation of the *Act*--failing to report to the FDA the failure of the company's widely prescribed anti-seizure drug Dilantin to meet stability test requirements. As a result of that prosecution, the company was fined \$10 million.

In the illicit drug arena, OCL has prosecuted numerous manufacturers and distributors of the body building and party drug, Gamma Hydroxy Butyrate (GHB). In addition to bringing cases in which such manufacturers and distributors have received significant prison sentences and fines for sale of this unapproved drug, OCL has coordinated investigations throughout the country and prosecutions by U.S. Attorneys' offices.

OCL attorneys are actively engaged in litigation to maintain the safety of the nation's food supply and consumer confidence in and understanding of the foods they purchase. OCL attorneys, acting at FDA's request, have obtained injunctions against pork and beef producers who do not adequately ensure that the animals they sell are free from drug residues. We have also defended against several attacks on the food labeling regulations that FDA adopted in the early 1990's pursuant to the *Nutrition Labeling and Education Act*. These regulations mandate the now familiar nutrition panels on food product labels and limit the health claims that can be made for foods and dietary supplements to those which have adequate scientific support.

OCL attorneys routinely bring civil enforcement actions under the *Food, Drug, and Cosmetic Act* to enjoin health and economic frauds. In a recent case that drew national media coverage, OCL attorneys sought and obtained an injunction to prevent the nationwide marketing of the "Stimulator," a device touted and widely sold for the relief of aches and

pains. The device had not been approved by FDA and was nothing more than an ignition device for gas grills which emitted a small amount of static electricity. There was no proof that the device actually produced any health benefit, and its cost exceeded by many times the retail price of its only active component, the grill igniter.

In another area of significant economic fraud, OCL prosecutes individuals who engage in large-scale odometer tampering, making a business of purchasing and selling hundreds of relatively new high-mileage, used cars, turning back their odometers 40,000 miles or more, and reselling them. Odometer tampering costs consumers billions of dollars annually, and victims are frequently lower income people who suffer significant economic damage and are helpless to defend themselves. Odometer tampering conspiracies usually involve numerous perpetrators who operate over several states, making local detection and prosecution virtually impossible. OCL, however, has been able to prosecute dozens of individuals each year. At sentencing, courts have found that, cumulatively, defendants have defrauded thousands of victims and caused tens of millions of dollars in losses to customers.

In July 1995, working with the FTC and several state agencies in what was dubbed "Operation Telesweep", OCL filed 22 complaints against 50 defendants in 10 judicial districts alleging violations of the FTC's Franchise Rule. These cases sought injunctions and civil penalties against individuals who violated the Franchise Rule in offering "business opportunities" to consumers who responded to advertisements promising an independent future. The violations involved failure to substantiate earnings claims and failure to identify current franchisees, as required by the Rule. Consent decrees were reached in 21 of the cases by March 1996.

OCL has been at the forefront of the Government's efforts to combat the harms associated with the promotion and sale of tobacco products.

Our attorneys are the lead counsel defending FDA's regulations, adopted in August 1996, aimed at reducing the use of cigarettes and smokeless tobacco products by persons under 18 years of age. The regulations require retailers to ascertain the age of prospective buyers through requiring photo identification, banning self-service and vending machine sales (except in adults only locations), restricting advertising to black and white text only format in publications that reach teenagers and children, and prohibiting the sponsorship of sporting and other events in the name of tobacco products and promotional items such as T-shirts bearing tobacco logos.

In 1995, OCL negotiated consent decrees with Madison Square Garden and Philip Morris, Inc., to enforce the statutory ban against broadcasts of cigarette advertising. The consent decrees, entered by Federal courts in New York and the District of Columbia, enjoin Madison Square Garden and Philip Morris from positioning cigarette advertising in sports arenas in locations where the advertising will appear in broadcasts of sporting events. In order to comply with that injunction, Philip Morris has repositioned or removed billboards in numerous sports stadiums. OCL continues to monitor the appearances of tobacco signs during sports and other entertainment broadcasts.

OCL maintains an active appellate practice in all of the areas mentioned above, and others. While the Civil Division's Appellate Staff handles appeals of some of our cases, OCL attorneys routinely defend on appeal the civil and criminal victories we obtain in Federal district court litigation. Additionally, where our client agencies issue rules and decisions that are directly reviewable in the courts of appeals, our attorneys brief and argue those cases.

Office of Immigration Litigation

The Office of Immigration Litigation was established in 1983 and conducts civil trial and

appellate litigation under the immigration and nationality laws. The Office has both affirmative and defensive litigation responsibilities. It represents the Immigration and Naturalization Service (INS), the Department of State, and other agencies that regulate the movement of aliens across and within our country's borders. The Office is responsible for passport and naturalization suits and for litigation arising under the immigration reforms of 1986, 1990, and 1996, including the new immigrant and non-immigrant visa systems, criminal and terrorist removal programs, and the employer sanction provisions (that affect citizens as well as aliens). The Office presently employs approximately 85 attorneys.

Office attorneys conduct litigation in both Federal district courts and circuit courts of appeals throughout the United States. Before the circuit courts, the Office responds to the review petitions by individual aliens challenging orders of removal, denials of political asylum, and other discretionary immigration benefits. The Office also handles petitions seeking review of employer sanctions and appeals from district court immigration decisions. Before the district courts, the Office responds to habeas corpus actions seeking to thwart detention or deportation, and to individual suits and class actions challenging immigration policy and enforcement actions by the Attorney General and the Secretary of State. Such litigation often involves complex issues of administrative law and substantial constitutional questions.

The Office is responsible for the nationwide coordination of all Federal court immigration litigation and last year received more than 2,200 new cases. Office attorneys may be assigned to handle particular cases individually or in concert with U.S. Attorneys and agency counsel. Currently some of the most active areas of immigration litigation are (1) *asylum and withholding of deportation*, including cases exploring the nature of protected "political opinion," the types of deprivation that constitute "persecution," and the demonstration of threatened persecution needed to secure sanctuary in

the United States; (2) *immigration reform*, including cases seeking to expand the availability of "amnesty" to undocumented aliens by extending the statutory eligibility criteria and application periods, and cases challenging the implementation and enforcement of employer sanctions; and (3) *criminal and terrorist alien litigation*, including cases testing reforms for the prompt expulsion of aliens convicted of serious felonies, and challenging the Government's ability to remove or refuse admission to aliens involved in terrorist violence. Litigation in these areas has involved constitutional questions such as the role of international law and the nature of the Executive Branch's foreign policy discretion in cases involving claims for political asylum; the applicability of due process to aliens seeking statutory immigration benefits and to the citizen family members of such aliens; and the reach of the First Amendment to aliens involved in violent "political advocacy." Additionally, the Office has begun what likely will be numerous cases arising from the 1996 reforms that adopted expedited removal procedures for certain aliens and substantially altered the role of Federal courts in immigration enforcement.

The breadth and variety of the immigration litigation is illustrated in matters raised in recent cases: the Attorney General's discretion to suspend normal immigration enforcement for aliens of certain nationalities; the procedures used by the INS and the State Department to respond to requests for political asylum; the high seas interdiction of aliens seeking to enter the United States; the distribution of immigrant visas among various nationality groups; the First Amendment interests of citizen audiences seeking to compel the issuance of visas to statutorily barred alien guests; the potentially indefinite detention of aliens who are statutorily prohibited from entering the United States but who cannot be returned to their native countries; the constitutionality of measures to combat immigration marriage fraud; the Attorney General's power to block aliens from leaving the United States; the right of citizens to renounce their

United States citizenship (and to rescind their renunciation); and the harmony of employer sanctions with the First Amendment guarantee of religious freedom.

Since the Office of Immigration Litigation was established fourteen years ago, the immigration docket has grown significantly. The variety and vitality of immigration litigation reflects the differing circumstances and motivations of the millions of persons who cross our borders each year. Recent events in Central America, Eastern Europe, and the Middle East, as well as pending legislative and regulatory reforms, promise continued growth and diversity in immigration litigation.

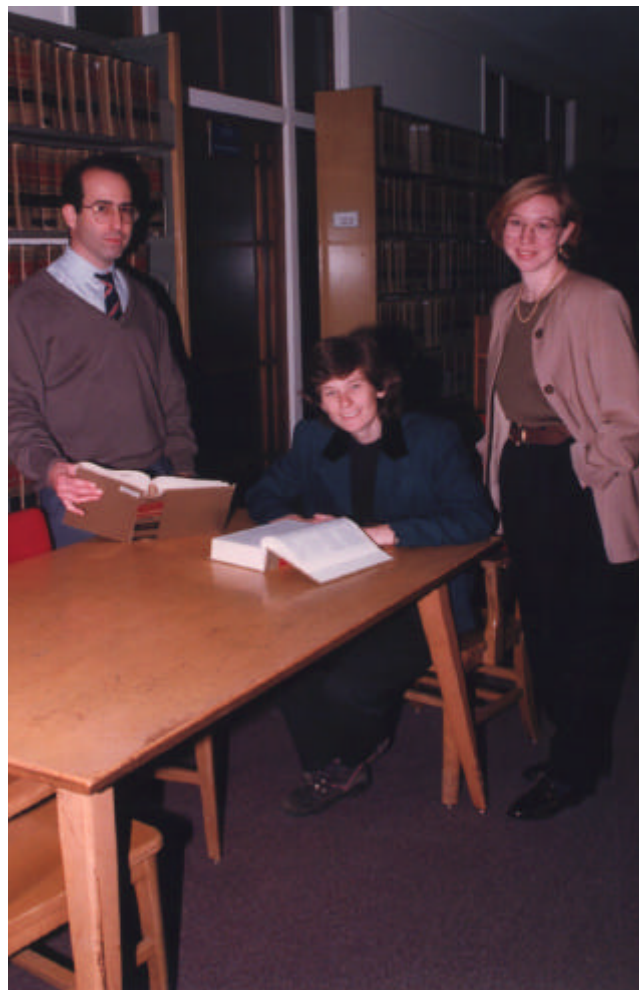
Appellate Staff

The Appellate Staff was established in 1953 by Warren Burger, then Assistant Attorney General of the Civil Division. At present, the Staff includes approximately 55 attorneys.

The Appellate staff is responsible for the appellate work of the entire Civil Division. Thus, the Appellate Staff caseload includes cases from all of the Division's Branches and Offices. The Staff also handles the many cases that are appealed directly from administrative agencies to the courts of appeals. Through giving the Staff broad jurisdiction, the Division retains centralized control of the Government's vital litigation in the appellate courts. In addition, each attorney participates in drafting various documents for the U.S. Supreme Court, including petitions for *certiorari* and briefs on the merits in Civil Division cases.

The Staff has achieved major successes in litigation in the Supreme Court and the courts of appeals. For example, in a series of Medicare cases, *Good Samaritan Hospital et al. v. Sullivan*, *Shalala v. Guernsey Memorial Hospital*, and *Thomas Jefferson University v. Shalala*, the Supreme Court adopted the Government's positions in major victories that have resulted in savings to the Government of over one half a billion dollars. In

Terry v. Reno, the Appellate Staff also successfully defended the constitutionality of the *Freedom of Access to Clinic Entrances Act* against challenges by anti-choice advocates that it violated their First Amendment rights. The court of appeals accepted the Staff's argument that the Act does not target protected speech, that Congress had the authority under the Commerce Clause to enact that statute, and that it does not violate the Equal Protection Clause.



Honor graduates Carl Goldfarb and Maria Simon of the Appellate Staff confer with trial attorney Anne Lobel (center).

The Staff has handled a wide variety of issues arising from the *Religious Freedom Restoration Act* and from the *Brady Act* in both the Supreme Court and the Court of Appeals. Other examples of the wide range of issues the Staff handles include: continuing litigation over the 1990 census; whether

an incumbent President may be sued for alleged activity that occurred before he was elected; the military's "don't ask don't tell" policy concerning sexual preference; suits brought by states to enforce immigration policy; laws requiring registration and community notification concerning released sex offenders; challenges to the HHS's waivers in certain welfare programs to permit states flexibility to implement welfare policies; and issues under the *Violence Against Women Act*.

Justice Consolidated Office Network (JCON)

JCON, the Justice Consolidated Office Network, is a Windows® 95-based office automation solution bringing to each Civil Division attorney's desktop a comprehensive suite of software centered on Corel's WordPerfect®. JCON fully integrates word processing, electronic mail, calendaring and scheduling, spreadsheeting, and external communications, including Internet email and access to the World Wide Web. It also provides access to case management, data processing, and automated litigation support systems, all from a single personal computer. The system enables communications between workstations in Washington, D.C. and field offices, as well as with workstations in every litigating organization in the Department, including the U.S. Attorneys. It also provides high-speed access to external legal research and other information systems such as WESTLAW, PACER, and the Official Airlines Guide. Special software is available at no cost to the attorney, enabling JCON remote access from a home PC. Additionally, the Office of Litigation Support makes laptop computers available to attorneys who must perform work on JCON while traveling.

JCON places at each attorney's fingertips a powerful support tool that is both technologically advanced and user-friendly. Given its superior ranking to the information systems in use elsewhere in the Federal Government or in private law practice, JCON affords Division attorneys a powerful tool.

Automated Litigation Support

The Automated Litigation Support (ALS) program provides Civil Division attorneys with the full range of services needed to manage the large document collections associated with major litigation. ALS employs modern computer and imaging technology to store and retrieve these massive volumes of materials. Such support enhances the legal staff's effectiveness in conducting discovery, preparing for depositions, and presenting evidence at trials. Attorneys can identify and locate essential documents in a fraction of the time that would be required without automation. Civil Division attorneys, utilizing litigation support, devote their time and effort to dealing with issues of law, rather than swimming through a sea of documents in search of elusive facts.



Brigadier General Daniel A. Doherty presents Civil Fraud attorneys Patricia Hanower, Rosemary Filou, and Steven Koh with plaques on behalf of the United States Army Criminal Investigation Command recognizing their superior work in land mine litigation.

Through the use of competitively procured contracts, the full spectrum of litigation support services is available to our attorneys. Specific services include: organization and screening of document collections in discovery; imaging and reproduction of documents at the discovery site; computerization and indexing of case materials; computer search and retrieval; statistical, auditing, and translation services; paralegal support for depositions and trial; and automated systems for tracking cases, parties, document productions, exhibits, and witnesses. Through consultation with the attorneys, these basic ALS services are tailored to the particular information requirements of the case. Where circumstances warrant, such as in cases involving the evaluation of statistical data, completely customized databases can be created. Other special services, such as obtaining auditors or translators, can be provided as the needs of the case demand. In addition, the recently expanded ALS portable computer lending program provides attorneys with access to JCON and their litigation support databases from home, while on travel, or at remote trial sites. These lightweight portable computers allow our attorneys to have "instant offices" wherever litigation takes them.

Over the past year, the ALS program has provided support for over 93 major cases, which in the aggregate represent over \$34 billion in potential liability. To bring the evidence under control, ALS microfilmed almost 8 million pages, computerized over 1 million documents, and created more than 200 databases. In addition, over 1 million hours of litigation support was provided to attorneys. Most importantly, as the attorneys themselves repeatedly state, ALS is a critical element in the effective management of litigation, playing an instrumental role in winning cases. For example, ALS was used extensively in *Enzor*, a Title VII employment discrimination case, providing database searches and preparing issue and witness binders which ultimately resulted in the Government not having to pay any money or admit any liability. In the contract termination suit *Boeing*, ALS computerized more

than 8 million pages of documents retrieved on-site from as far away as Saudi Arabia and established numerous databases, including two document databases which contained over 2 million items. This support resulted in Boeing Co. dropping its \$1.2 billion claim against the Government.

Management Information Systems

The Civil Division utilizes automated information system technology to support the management and operation of the Division. Collectively known as CASES, those automated systems with the broadest application within the Division are the Case Management System, the Attorney Timekeeping System, and the Automated Records Management System. Many other automated tracking systems designed for specific offices within the Division are also supported. These include, among others, a budget modeling system, a personnel tracking system, a system for tracking fraud referrals, and a foreign litigation service request tracking system. All of the systems operate on the Division's IBM AS/400 computer and can be accessed via JCON workstations.

The Case Management System tracks cases from receipt through the trial and appellate stages, and into the accounts receivable stage. The database contains information on the status and history of more than 400,000 open and closed cases, with a current active workload of nearly 18,000 cases involving more than \$100 billion. This database is the Division's primary tool for controlling and tracking its cases.

Since 1981, Civil Division attorneys and paralegals have reported their daily time to the Attorney Timekeeping System. Case-related time, recorded by specific litigation activity for each case worked, combined with case information, provides the basis for caseload, trend, and budgetary analysis. Some managers have found the data invaluable in meeting very specific needs such as demonstrating to client agencies the level of support for their cases, con

firming cost savings over the use of private fee counsel, and evaluating the impact of legislation and regulations. Attorneys routinely use the data to support or refute claims for attorney fees, and to justify requests for continuances.

Automated Records Management System (ARMS) tracks the location and contents of case files which reside in the Division's file rooms. The system currently contains records of over 806,000 cases. The system, accessed directly through JCON, can be used to request delivery of a file from the applicable file room.

Training

The Civil Division supports a wide range of training opportunities for attorneys. By both formal and informal means, the litigation skills of new attorneys are quickly developed. An attorney's responsibilities grow along with increased mastery. Typically, during the first year with the Division, a new attorney may expect to have "first chair" litigation responsibility, either at the trial level or in the appellate courtroom.

The Civil Division Training Office assists employees in obtaining knowledge and skills necessary to help them perform their jobs as effectively as possible. To that end, the Training Office develops and presents seminars for both attorneys and support staff. Advocacy training is intense. The Office also serves as an information resource about courses offered by other Departmental components and selected outside sources.

The Training Office works closely with the Civil Division's Standing Training Committee, which is composed of representatives from all components of the Division. The Committee assists the Training Office in setting overall training goals and priorities and co-sponsors the Division-wide New Attorney Orientation Program and the Civil Division Roundtable.

Roundtable

The Civil Division Roundtable is one component of the Division's training program. Developed by the Standing Training Committee, the Roundtable program is designed to bring the Division's employees into contact with Federal judges, attorneys in private practice, law school professors, and senior Executive Branch officials in an informal setting. To achieve this personal atmosphere, attendance is limited to fifty employees, and participants are encouraged to ask questions and engage in discussion with the guest speaker.

Conclusion: The Civil Division Attorney

As part of the nation's largest law firm, the Civil Division offers attorneys an incomparable legal environment. The authority and responsibility that our attorneys exercise in representing the United States are unmatched. They speak with the authority of the Attorney General of the United States and often handle cases that profoundly affect the Treasury and the policies and programs of the President and Congress. Our attorneys have the resources of the Civil Division, the entire Department of Justice, including the Federal Bureau of Investigation, and the assistance of the U.S. Attorneys, to aid them in making the most effective presentation of their cases.

A substantial portion of every Civil Division trial attorney's caseload consists of personally handled cases. The Civil Division attorney, at all levels of experience, finds him or herself the counsel of record for the United States in cases having a critical financial, political, or social impact on the country. Division attorneys also monitor or work jointly on cases referred to U.S. Attorneys' offices. The volume of civil cases makes such a division of caseload necessary.



Competitive both inside and outside the courtroom, Civil Division attorneys and staff members play softball on the Mall, a Washington tradition. "Club Fed" is one of many Civil Division teams.

In the performance of their responsibilities, Division attorneys may be required to meet with the Assistant Attorney General of the Civil Division, other senior Justice Department officials, representatives from other Government agencies, the White House, and the Office of Management and Budget. The nature of these contacts depends on the scope of the case and the stage of the litigation. Contact with client agencies is wide and diverse, touching all aspects of the Government's activities.

The Civil Division also presents opportunities for international contact. The Division has hosted foreign justice officials wishing to learn more about how civil litigation is handled in U.S. courts. The Office of Foreign Litigation in the Commercial Litigation Branch also has extensive international contacts. The field office in London works directly with foreign counsel representing the United States in suits where it has been named a party. The Office provides assistance to Government attorneys and members of the public on issues pertaining to

international litigation, *e.g.* service of process and taking of evidence abroad.

The Civil Division recruits and hires a high caliber work force that reflects the diversity of the clientele that it serves. This includes members of minority groups, women, and the physically challenged. The Division ensures that its recruitment efforts reach the widest pool of new and experienced legal talent. The Division possesses opportunities for qualified lawyers of all back-grounds.

The challenge facing a Civil Division lawyer is unique. Representing the United States presents an opportunity unequalled in any other practice. The issues, the authority, and the responsibility with which our attorneys are entrusted are recognition that they are among an elite group of the most highly skilled advocates in the United States.

Civil Division cases set precedent and have far-reaching consequences, not only for the Government but for the people of the United States. Each attorney in the Civil Division plays a critical role in this meaningful and gratifying work.



Honor Graduate William Rivera meets Attorney General Janet Reno at the Attorney General's annual reception for new Honor Graduates.